

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/11/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000859

FILED: _____

STATE OF ARIZONA

THOMAS A ZAWORSKI

v.

DENA MAY KINGSLEY

TODD K COOLIDGE

CHANDLER CITY-MUNICIPAL COURT
FINANCIAL SERVICES-CCC
REMAND DESK CR-CCC

MINUTE ENTRY

CHANDLER CITY COURT

Cit. No. 01-P-855389, 01-P-855390, 01-P-855391

Charge: CT 1. DUI-LIQUOR/DRUGS/VAPOS/COMBO
CT 1. DUI W/BAC .10 OR MORE
CT 1. EXTREME DUI

DOB: 03/05/45

DOC: 04/14/00

This Court has jurisdiction of this appeal by the State of Arizona pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since oral argument on May 22, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings from the Mesa City Court, and the Memoranda submitted by counsel.

Appellant, Dena May Kingsley, was charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); Driving With a Blood Alcohol Content Greater Than .10, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2); and Extreme DUI, a class 1 misdemeanor in violation of A.R.S. Section 28-1382(A). Appellant filed a Motion to Suppress all evidence obtained after an allegedly improper stop and seizure by the Chandler police officers. The trial court held a hearing on Appellant's Motion to Suppress on November 71, 2001. The trial judge found that the arresting officer had a reasonable suspicion that Appellant committed a violation of A.R.S. Section 28-754(B) which warranted the stop and seizure of Appellant. After the trial judge's ruling, the parties submitted the issues of guilt or innocence to the court and waived their rights to a jury trial. On December 5, 2001, Appellant was found guilty of all charges. Appellant filed a timely Notice of Appeal in this case.

Appellant claims that the trial court erred in failing to suppress all evidence gathered after an unreasonable stop of Appellant. Appellant claims that the Chandler Police officers did not have a "reasonable suspicion" which would justify the stop of Appellant's vehicle. An investigative stop is lawful if the police officer is able to articulate specific facts which, when considered with rational inferences from those facts, reasonably warrant the police officer's suspicion that the accused had committed, or was about to commit, a crime.¹ These

¹ Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1998); Pharo v. Tucson City Court, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

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facts and inferences when considered as a whole the ("totality of the circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."² A.R.S. Section 13-3883(B) also provides in pertinent part authority for police officers to conduct a "investigative detention":

A peace officer may stop and detain a person as is reasonable necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation.

A temporary detention of an accused during the stop of an automobile by the police constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment even if the detention is only for a brief period of time.³ In Whren⁴, the United States Supreme Court upheld the District's Court denial of the Defendant's Motion to Suppress finding that the arresting officers had probable cause to believe that a traffic violation had occurred, thus the investigative detention of the Defendant was warranted. In that case, the police officers admitted that they used the traffic violations as a pretext to search the vehicle for evidence of drugs. The Court rejected the Defendant's claim that the traffic violation arrest was a mere pretext for a narcotic search, and stated that the reasonableness of the traffic stop did not depend upon the actual motivations of the arresting police officers. Probable cause to believe that an accused has violated a traffic code

² United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed. 2d 621, (1981).

³ Whren v. United States, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

⁴ Id.

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renders the resulting traffic stop reasonable under the Fourth Amendment.⁵

The sufficiency of the legal basis to justify an investigative detention is a mixed question of law and fact.⁶ An appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the officer.⁷ This Court must review those factual findings for an abuse of discretion.⁸ Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.⁹ This Court must review *de novo* the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.¹⁰

The trial judge's ruling is supported by the record. Officer Salazar of the Chandler Police Department testified that he observed Appellant driving with a flat tire. Appellant was driving well under the posted speed limit and the officer observed her make a U-turn. These facts clearly show that Appellant was driving on a flat tire and her actions demonstrate that she may have attempted to evade the Chandler Police officer. And, having further determined that a factual basis exists to support the trial court's ruling, this Court also determines *de novo* that said facts do establish a reasonable basis for the Chandler Police officers to have stopped the automobile driven by the Appellant.

⁵ Id.

⁶ State v. Gonzalez-Gutierrez, 1987 Ariz. 116, 118, 927 P.2d 776, 778 (1996); State v. Magner, Supra.

⁷ Id.

⁸ State v. Rogers, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

⁹ State v. Chapple, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

¹⁰ State v. Gonzalez-Gutierrez, 187 Ariz. at 118, 927 P.2d at 778; State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

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IT IS THEREFORE ORDERED sustaining the judgments of guilt and sentences imposed by the Chandler City Court.

IT IS FURTHER ORDERED remanding this matter back to the Chandler City Court for all future and further proceedings in this case.